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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

No._____

JOHN D. RANDALL,

Petitioner,

vs.

W.W. REYNOLDSON; CLAY LeGRAND; WARREN J. REES; HARVEY UHLENHOPP; DAVID HARRIS; MARK McCORMICK; ROBERT G. ALLBEE; ARTHUR A. McGIVERIN; JERRY L. LARSON,

Respondents

IN THE MATTER OF SUSPENSION TO PRACTICE BEFORE THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF IOWA OF JOHN D. RANDALL

JOHN D. RANDALL,

Petitioner

IN THE MATTER OF SUSPENSION TO PRACTICE BEFORE THE UNITED STATES DISTRICT COURT OF THE NORTHERN DISTRICT OF IOWA OF JOHN D. RANDALL

JOHN D. RANDALL

Petitioner

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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June 1981

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A

OPINION OF THE EIGHTH CIRCUIT

GIBSON, Senior Circuit Judge.

This consolidated appeal concerns four separate proceedings involving the disbarment of John D. Randall, Sr., herein after referred to as Randall, from the practice of law. On November 14, 1979, the Supreme Court of Iowa disbarred Randall for drawing a will for a business partner, in which Randall named himself as sole beneficiary, and for engaging in a conflict of interest by representing a corporation, wholly owned on an equal basis by Randall and his business partner, in litigation with a former employee. Committee on Professional Ethics and Conduct of the Iowa State Bar Association v. Randall, 285 N.W.2d 161 (Iowa Sup. Ct. 1979), cert. denied, _____U.S._____, 64 L.Ed.2d 802(1980).[1]

[1]Randall challenged the Iowa disbarment proceedings by filing a 42 U.S.C. § 1983(1976) remedy action in the united States District Court for the Northern District of Iowa against each of the justices of the Supreme Court of Iowa, alleging a denial of due process and equal protection. The District Court dismissed the action on May 20, 1980, finding it to be essentially a collateral attack on the decision of the Supreme Court of Iowa. Randall appeals this decision in Appeal No. 80-1451.

Randall's disbarment in Iowa resulted from his actions, found to be a conflict of interest in connection with drawing a will for Lovell Myers and also from Randall's representation of Myers's corporate interest. The complete findings of the Supreme Court of Iowa with regard to these matters are reported in Randall, supra, 285 N.W.2d 161-65. We present below only a short summary of these findings.

In the early 1940's Randall met Myers and entered into a joint venture for the purpose of purchasing and farming farmland in Iowa. Myers managed the day-to-day farming activities, while Randall handled the financial affairs. In 1952, Myers and Randall incorporated the farming operation, under the corporate name of Myers Farms, Inc., each receiving fifty percent of the stock.

Myers was divorced from his wife in the early 1940's. Myers did have a child, now Mrs. Marie Jensen, by way of the marriage. In 1949, she married and has had two sons. Myers was relatively close to his daughter and grandsons

prior to his death in 1976. Randall contended this was not so, but the Supreme Court of Iowa found to the contrary.

The farming venture prospered under the ownership of Myers and Randall. In 1973, however, the farm foreman, Gilbert Morningstar, accused Myers of forging a deed to an eighty-acre tract of land which Morningstar acquired by warranty deed in 1956 from Charlie Hess. This deed was recorded on February 29, 1956. In 1967, a deed, admittedly forged by Myers, was signed, conveying the eighty acres from the Morningstars to Myers Farms, Inc. This forged deed was notarized by an associate in Randall's office. Later the corporation executed a $90,000.00 mortgage on this eighty acres, which mortgage also included other land belonging to the corporation. At the time Morningstar confronted Myers and Randall with the forged deed, Randall, at Myers's urging, prepared and executed a quit-claim deed to the land from the corporation to the Morningstars. Myers assured Morningstar that the mortgage

would be released from this eighty-acre propert
When the release was not forthcoming after abou
a year, Morningstar resigned from his employmen
and sued the corporation, Myers, and Randall to
remove the mortgage and for damages. Randall
represented himself and the corporation in
the action surrounding the title to the land.
See Morningstar v. Myers, 225 N.W.2d 159(Iowa
1977). In that action, which was dismissed
on January 17, 1979, by the parties, Randall
claimed title to the land under a copy of an
unrecorded deed antedating by a day the
original, recorded deed to Morningstar. This
alleged deed from the Morningstars was never
filed of record and has never been produced,
although a copy of it was produced by Randall
in defense of the Morningstar suit. We note,
however, that the corporation did not claim
title under the purported unrecorded deed
when it obtained a mortgage on the land in 1967

Approximately one month after Morningstar
accued Myers, in Feburary 1973, of forging
the land deed, Myers executed a will. The

will was drawn by Randall and named Randall sole executor and sole beneficiary of Myers's estate, valued at over two million dollars. Randall placed the will in his private desk drawer, did not keep a copy in the office file, and apparently did not give a copy to Myers.

In early 1976, Myers died. A few days later, Randall asked Mr. Jensen whether she knew of any will made by Myers, her father. She replied in the negative and inquired of Randall whether he knew of any. He said he did not. Less than a week later, Randall filed Myers's will in the probate court. Randall explained his denying knowledge of a will to Mrs. Jensen as a lapse of memory.

Mrs. Jensen subsequently filed a suit contesting the will. Radall settled the suit for approximately one and one-half million dollars. Prior to settlement, Mrs. Jensen filed a complaint against Randall with the Iowa Bar, which ultimately resulted in Randall's disbarment by the Supreme Court of Iowa.

Following the state disbarment, on January 17, and May 20, 1980, respectively, the United States District Courts for the Southern and Northern Districts of Iowa disbarred Randall from practice in their courts on the basis of the Supreme Court of Iowa's action in the disbarment proceedings. Randall appeals these decisions in Appeals No. 80-1254 and 80-1545 respectively. On July 10, 1980, this court entered an order for Randall to show cause why he should not be suspended or disbarred by the Eighth Circuit. This original proceeding is No. 80-8117, wherein Randall contends he should not be disbarred from this court.

We affirm the decisions of the District Courts in disbarring Randall and in dismissing his 1983 action against the justices of the Supreme Court of Iowa, and we disbar Randall from the practice of law in the United States Court of Appeals for the Eighth Circuit.

I.

The licensing of attorneys is primarily

a state function, usually under the aegis and direction of the various states' highest courts. The federal courts, except in limited circumstatnces, recognize and give effect to the findings of disciplinary proceedings in the state courts.

The Iowa Supreme Court in a unanimous decision, with one justice not participating, held Randall to be in violation of the Iowa Code of Professional Responsibility and revoked his license. The United States Courts of Appeals are without jurisdiction to review a state judgment of disbarment. Jones v. Hulse, 391 F.2d 198, 202 (8th Cir.), cert. denied, 393 U.S. 899 (1968); e.g., Sawyer v. Overton, 595 F.2d 525 (5th Cir. 1979); Rivera v. Mange, 587 F.2d 529 (1st Cir. 1979). The only appeal from the Iowa court is by way of certiorari to the United States Supreme Court. See Konigsbert v. California, 353 U.S. 252, 258 (1957) (limited review of state admission proceeding by Supreme Court on review by writ of certiorari); In re Summers, 325 U.S.

561, 568-69 (1945) (same).

With regard to Randall's potential disbarment from this court, however, we have jurisdiction to review the findings of the Supreme Court of Iowa. Still, this court must give high respect to the judgment of the state court in its disbarment proceedings. "But it is not conclusively binding on the federal courts." Theard v. United States, 354 U.S. 278 (1957). See In Re Ruffalo, 390 U.S. 544, 547 (1968); Jones v. Hulse, supra, 391 F.2d at 200-01. "Disbarment by federal courts does not automatically flow from disbarment by state courts." Theard, supra, 354 U.S. at 292. The extent of the responsibility of a federal court to make an independent, de novo review was outlined by the Supreme Court in Selling v. Radford, 243 U.S. 46, 50-51 (1916), wherein the Court stated:

> That is to say, we are of opinion that we should recognize the condition created by the judgment of the state court unless, from an intrinsic consideration of the state record, one or all of the following conditions should appear: 1. That the state procedure from want of notice or opportunity to be heard was

> notice or opportunity to be heard was wanting in due process; 2, that there was such an infirmity of proof as to facts found to have established the want of fair private and professional character as to give rise to a clear conviction on our part that we could not consistently with our duty accept as final the conclusion on that subject; or 3, that some other grave reason existed which should convince us that to allow the natural consequences of the judgment to have their effect would conflict with the duty which rests upon us not to disbar except upon the conviction that, under the principles of right and justice, we were constrained so to do.

II.

Since the crux of these regrettable proceedings rests primarily on the disbarment judgment of the Supreme Court of Iowa, we first consider the collateral attack, by way of the section 1983 complaint, on that

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judgment. The section 1983 injunctive remedy action was filed against the justices, individually, of the Supreme Court of Iowa. In his complaint, Randall charged that the justices deprived him of equal protection and due process in violation of the fourteenth amendment. Randall alleged (1) that he was denied discovery; (2) that he was tried by a

biased panel of the Grievance Commission; and (3) that generally there were insufficient facts in the record to support his disbarment. Randall also alleges certain improprieties by chief counsel for the Ethics Committee, Gaudineer, and by the Grievance Commission.

Randall, by filing his section 1983 remedy against the justices of the Supreme Court of Iowa, has attempted to obtain collateral review of the findings of that court. This court has taken the position that res judicata applies to issues previously litigated in the state disciplinary procedures. Goodrich v. Supreme Court of the State of South Dakota, 511 F.2d 316, 318 (8th Cir. 1975). We held in Goodrich, however, that only those issues which were actually litigated would be subject to res judicata, or more precisely, collateral estoppel. Id. We therefore will not review the factual basis of Randall's Iowa state disbarment, except to the extent that we find the acts alleged were of a nature as to form a proper predicate for disbarment

procedures. See Allen v. McCurry, ____, ____, 49 U.S.L.W. 4015, 4019 (Dec. 9, 1980).

Randall's allegations regarding lack of due process in the disciplinary procedure were not ruled upon by the Supreme Court of Iowa. That court held that since Randall did not present the issue before the Grievance Commission or in his brief to the court he could not raise it for the first time at oral argument, and then concluded that the due process argument must be considered waived. Randall, supra, 285 N.W.2d at 164-65. This constitutional issue is properly before us for review. C.f. Allen v. McCurry, supra, _____ U.S. at _____, 49 U.S.L.W. at 4017 n. 5 (reserving judgment).

Randall claims that the denial of his discovery against the justices of the Iowa Supreme Court, and earlier, against the Grievance Commission members, was a denial of due process. We have reviewed the record and find that the interrogatories presented to those individuals were an attempt to

obtain the mental impressions of the Commission and of the court in the decisionmaking process. The Iowa disciplinary proceedings constituted an inquiry into Randall's professional conduct. Randall attempted to counter by trying the Commission and the Iowa Supreme Court. These tactics are impermissible, contrary to an orderly system of justice, and present no justiciable issue in limiting discovery into the internal operations of the Commission and the Supreme Court of Iowa. See Hickman v. Taylor, 329 U.S. 495, 510-11 (1947): c.f. Dennis v. Sparks, _____U.S. _____, _____, 49 U.S.L.W. 4001, 4003 (Nov. 17, 1980) (Court "unaware of any rule generally exempting a judge from the normal obligation to respond as a witness when he has information material to a criminal or civil proceeding." (Footnote omitted.)) This would not extend to the functioning of the judicial process, as it is recognized to be "in the public interest to have judges who were at liberty to exercise their independent judgment about the merits of

a case without fear of being mulcted for damages should an unsatisfied litigant be able to convince another tribunal that the judge acted not only mistakenly but with malice and corpution." (Citations omitted.) Id. Both the Supreme Court of Iowa and the United States District Court for the Northern District of Iowa properly limited discovery in this area.

We next review Randall's allegation of bias on the part of the Grievance Commission. Randall was allowed to raise this allegation in an interlocutory proceeding before the Supreme Court of Iowa. The court denied the challenge with the reservation that it could be raised in the de novo disbarment hearing before the court after the Grievance Commission had made its recommendation. Randall did not subsequently raise this issue before that court. While we believe that this allegation is probably barred by the doctrine of res judicata as outlined in Goodrich, supra, 511 F.2d at 318, we find that the Commission was

not baised against Randall, be either "pre-judgment of the facts or personal interest." Gibson v. Berryhill, 411 U.S. 564, 578(1973). Furthermore, the District Court also examined the merits of Randall's claim and could "find no violation of any constitutional rights." This court should give deference to the District Court's findings on this matter. Id. at 579.

The members of the Grievance Commission individually asked a number of questions of the witnesses. Randall complains of the members' activity in this regard and alleges that it demonstrates a bias against him. We think, to the contrary, that it demonstrates the Commission's interest in actually trying to ascertain the true facts of this somewhat complex interplay of human emotions and personal interests covering an adult lifetime of activity. The testimony elicited still leaves unanswered some pertinent questions, i.e., how the forged deed from Morningstar to Myers and Randall was notarized in 1967; what

happened to the original warranty deed in 1956 from Morningstar to Myers and Randall antedating by one day the conveyance to Morningstar and which Randall is claiming gives him title to the land; and, further, why was the that deed not filed of record? It appears, however, that the Grievance Commission adopted a very neutral stance in not allowing the initial complaint to be amended by the complaintant or ordering the amendment itself. The Commission was patient with Randall and all the witnesses, allowing the witnesses and counsel all the time needed to present the testimony offered. The Grievance Commission even adjourned in the midst of its hearing to allow Randall to take an interlocutory appeal to the Iowa Supreme Court, alleging the bias of the Commission. We view the Commission as having objectively undertaken a not-too-pleasant task, and as having conscientiously considered the charges and the defense presented. Randall's due process rights were fully repsected by the Commission.

Finally, we again note that Randall was given due notice and a plenary hearing before both the Grievance Commission and the Supreme Court of Iowa.[2] There were sufficient factual matters in the record concerning Randall's conduct to form a proper predicate for the sanctions imposed.

We also find no violation of Randall's equal protection rights concerning the disbarment proceedings. Randall also contends that he is being singled out for treatment because of his prominent position as one of the leading attorneys of the State of Iowa, and as a past president and other high official of the American Bar Association. We find this contention lacks merit. Suffice it to say that other prominent Iowa lawyers have been disciplined. The State Bar in Iowa has disciplined, although not disbarred, a former

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[2]In our review of Randall's allegations of impropriety concerning the Ethics Committee and the Grievance Commission, we have been unable to find any actions that can be raised to the level of a constitutional violation.

United States Congressman, a former president of the Young Lawyers Section of the Iowa State Bar Association, and a professor at the University of Iowa School of Law.

Randall also alleges unequal treatment in the punishment of disbarment imposed on him. While we do not feel it is incumbent upon the Ethics Committee counselor, Gaudineer, to show equality of treatment, as there are so many various factors involved in each bar disciplinary porceeding that the court must be given considerable leeway in meting out the sanctions imposed, we do feel that a defense of this type should be viewed as an affirmative one which falls upon the lawyer charged with the misconduct; from the record here, there is a total lack of evidence indicating that Randall has been singled out for punitive treatment. In addition, each disbarment proceeding must stand on its own factual situation. Here, though the sanction imposed was severe, it was within the permissible range under the law. We are not in a

position, nor authorized, to second-guess the highest state court on the sactions it imposes.

III.

We next address the matter of the potential suspension or disbarment of Randall from this Court. Randall was issued a show cause order on July 10, 1980, concerning why he should not be disbarred from this court. See Federal Rule of Appellate Procedure 46(b); Theard v. United States, 354 U.S. 278, 282 (1957). Randall responded principally by challenging the factual basis of the Supreme Court of Iowa's opinion in his disbarment from that court. See Randall, supra, 285 N.W.2d at 161-64.

The limited standard of review of the factural findings of the Supreme Court of Iowa involving Randall was outlined in Selling v. Radford, supra, 243 U.S. at 46; ante at _____. Accordingly, we have reviewed the entire record of the state disbarment proceedings, including reading the voluminous

transcript of Randall's hearing before the Grievance Commission and the appendix filed in the Supreme Court of Iowa case. The evidence produced, based in large part upon Randall's uncontroverted testimony, established that Randall, on March 14, 1973, drew a will for Lovell Myers, his business partner for over twenty-five years, in which Myers left his entire estate, conservatively valued at over two million dollars, to Randall. We agree with the Supreme Court of Iowa that this action violated Ethical Canon 5-5 of the Iowa Code of Professional Responsibility for Lawyers, as in effect in 1973, which provided:

> A lawyer should not suggest to his client that a gift be made to himself or for his benefit. If a lawyer accepts a gift from his client, he is peculiarly susceptible to the charge that he unduly influenced or overreached the client. If a client voluntarily offers to make a gift to his lawyer, the lawyer may accept the gift, but before doing so, he should urge that his client secure disinterested advice from an independent, competent person who is cognizant of all the circumstances. Other than in exceptional circumstances, a lawyer should insist that an instrument in which his client desires to name him beneficially be prepared by another

lawyer selected by the client. (Emphasis added.)

The Supreme Court of Iowa found the "exceptional circumstances" clause did not apply in Randall's case. Randall, supra, 285 N.W.2d at 165. On appeal, Randall makes the same argument in favor of its application as he did in the Iowa proceedings. Randall contends that the long years of his business partnership with Lovell Myers should allow him to draw a will leaving him the entire estate.

We disagree. First, the amount of property involved, plus the fact that Myers had a living daughter and two grandsons, put Randall on notice that other parties might have a significant interest in pursuing a will contest if Randall were to draw a will naming himself as beneficiary. Second, circumstances surrounding the drawing of the will, namely the controversy concerning the land deed involving Lovell Myers and an employee, foreman Gilbert Morningstar, should

have alerted Randall to the charges of over-reaching or undue influence which might arise if he were to draw the will. Randall erred and erred grievously.

Randall next argues that even if he violated Ethical Canon 5-5 he should not be disbarred for a merely ethical, as opposed to disciplinary, violation. The Supreme Court of Iowa, in Committee on Professional Ethics and Conduct of the Iowa State Bar Association v. Behnke, 276 N.W.2d 838, 840 (Iowa Sup. Ct.), appeal dismissed, 444 U.S. 805 (1979), held that "violation of an ethical consideration, standing alone, will support disciplinary action." Randall contends that holding violates both due process and the ex post facto clause.

Randall's contention that violations of ehtical canons could not lead to professional discipline, as that would be violative of due process, is not well taken. Ethical considerations are more than aspirational

and are mandatory.[3] The Supreme Court of Iowa, in Matter of Frerichs, 238 N.W.2d 764, 769, specifically held:

> All lawyers practicing before this court are bound by the cannons and the provisions of the Iowa Code above set out. They are not free to view them merely as aspirational. A canon cannot be ignored by an attorney upon the claim he believes it conflicts with his view of a constitutionally protected right.

Furthermore, it appears that the prohibition contained in EC 5-5, prohibiting the drafting of a will be an attorney making himself a beneficiary, is but the current articulation of a long-standing porhibition against that practice. Obviously such a situation is fraught with a high potential for overreaching and abuse. The prohibition in EC 5-5 is also only a restatement of old old Canon 9,

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[3]We are not holding that every violation of an ethical consideration would be grounds for disciplinary action, but are holding that the violation herein involved, being significant and substantial, and having been found by the Iowa Supreme Court to be a basis for disciplinary proceedings, is also thought by us to constitute an appropriate basis for action.

Canons of the American Bar Association. In Re Krotenberg, 111 Ariz. 251, 527 P. 2d 510, (1974); Columbus Bar Association v. Ramey, 32 Ohio St.2d 91, 290 N.E.2d 831 (1972); In Re Jones, 254 Or. 617, 462 P.2d 680 (1969); In Re Kneeland, 233 Or. 241, 377 P.2d 861 (1963); In Re MacFarlane, 10 Utah 2d 217, 350 P.2d 631 (1960); In Re Moore, 218 Or. 403, 345 P.2d 411 (1959); Lantz vs State Bar of California, 212 Cal. 213, 298 P. 497 (1931).

Randall also contends that application of EC 5-5 to his situation constituted an ex post facto enforcement of that prohibition. The ex post factor contention falls for two reasons: (1) The ex post facto clause and concept is anly applicable in criminal cases. See Galvan v. Press, 347 U.S. 522, 531 n.4 (1954); Nicholson v. Judicial Retirement and Removal Commission, 562 S.W.2d 306, 308 (Ky. 1978). And (2) there is no true ex post fact situation here presented, as a prohibition both in the old canons of professional

responsibility and in the new codes have condemned the practice herein charged.

The Supreme Court of Iowa also found that Randall's representation of both his own and Myers's corporate interests in the Morningstar land title suit was a conflict of interest in violation of Iowa's Disciplinary Rules 5-101(A) and 5-104(A).[4] The Court based this finding on Randall's suspicions concerning the forged deed involving Myers and Morningstar. We agree with the Supreme Court

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[4]Iowa Disciplinary Rule 5-101(A) provides:

> Except with the consent of his client after full disclosure, a lawyer shall not accept employment if the exercise of his professional judgment on behalf of his client will be or reasonably may be affected by his own financial, business, property, or personal interests.

Disciplinary Rule 5-104(A) provides:

> A lawyer shall not enter into a business transaction with a client if they have differing interests therein and if the client expects the lawyer to exercise his professional judgment therein for the protection of the client, unless the client has consented after full disclosure.

of Iowa that, in these circumstances, Randall was under a duty to withdraw from representation of Myers's fifty percent interest in the corporation.

We therefore find that Randall's actions with regard to the will and the representation of Myers's corporate interest warrant disbarment from this court.

IV.

Finally, we turn to Randall's disbarment from the United States District Courts for the Northern and Southern Districts of Iowa. Both courts independently reviewed the proceedings before the Supreme Court of Iowa in accordance with the dictates of Selling v. Radford, supra, 243 U.S. at 50-51, and found sufficient bases for disbarment in their courts. Given our disposition of Randall's disciplinary procedure before this court, ante at 16, the District Courts did not err in disbarring Randall.

John D. Randall, Sr. is ordered disbarred from this court.

The decision of the Districts Courts are affirmed.

A true copy.

Attest:

CLERK, U. S. COURT OF APPEALS, EIGHTH CIRCUIT.

B

ORDER DISMISSING REYNOLDSON CASE IN THE NORTHERN DISTRICT OF IOWA.

This matter is before the court on defendants' resisted, amended and substituted motion to dismiss filed March 25, 1980.[1] Dismissed.

Plaintiff John D. Randall was charged by the Grievance Committee of the Iowa State Bar Association in a two-count complaint with unprofessional conduct arising from his acting as both draftsman and sole beneficiary of a client's will and representing a client

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[1]On February 22, 1980, defendants also filed a motion to dismiss with brief. However, defendants' second motion apparently was intended to incorporate and supersede that motion and both motions will be considered together.

in litigation in which there was a conflict between the client's and Randall's interests. After hearing and recommendation by the Commission, Randall was disbarred by the Iowa Supreme Court. Committee on Professional Ethics v. Randall, 285 NW2d 161 (Iowa 1979) cert. denied _____USLW _____(1980).

Randall then filed this action, apparently against the individual justices of the Iowa Supreme Court seeking to have this court determine that the Supreme Court of Iowa violated his rights to due process and equal protection and that he has a right to have the opinion set aside and his license to practice restored.

Defendants have moved to dismiss on the following grounds:

> (1) That 42 USC §1983 does not confer subject matter jurisdiction upon this court to review the merits of a final judgment of a state supreme court disciplining a member of the courts' bar for professional misconduct.
>
> (2) That the action is barred by the claim preclusion branch of the doctrine of res judicata.

(3) That the court should decline jurisdiction on grounds of comity.

(4) Plaintiff has failed to state a claim against the individual justices.

(5) The court lacks personal jurisdiction over several of the defendants because proper service has not been made.

(6) Plaintiff has failed to state a claim for relief.

Plaintiff has resisted the motion in each particular. While the court agrees with defendants' position with respect to all grounds except #3, it feels that only #1 and #2 warrant discussion here.

It is clear that a lower federal court is wholly without jurisdiction to review, in an appellate capacity, the merits of a state disciplinary proceeding. See Martinez Rivera v. Trias Monge, 587 F.2d 539 (1st Cir. 1978); Grossgold v. Supreme Court of Illinois, 557 F.2d 122 (7th Cir. 1977); Doe v. Pringle, 550 F.2d 596 (10th Cir. 1976); MacKay v. Nesbett, 412 F.2d 846 (9th Cir. 1969); Jones v. Hulse, 391 F.2d 198 (5th Cir. 1968). It is the United States Supreme Court which has

exclusive jurisdiction to review final judgment of a state court under 28 USC §1257 and even this review is limited to narrow constitutional issues. See Theard v. United States, 354 U.S. 278 (1956; Schware v. Board of Bar Examiners, 353 U.S. 232 (1957); Donigsberg v. State Bar of California, 353 U.S. 252 (1957).

Further, the Eighth Circuit has held that the principle of res judicata applies to Section 1983 actions and operates as a bar to the relitigation of constitutional issues actually raised, as well as to constitutional issues that could have been raised in prior lawsuit if the second suit concerns the same operative nucleus of fact. See Robbins v. District Court of Worth City, Iowa, 529 F.2d 1015 (8th cir. 1970); Goodrich v. Supreme Court of South Dakota, 511 F.2d 316 (8th Cir. 1975); Vorbeck v. Whaley, 478 F. Supp. 1111 (E.D. Mo. 1979).

It is only if the issues were not presented or decided that they may be

relitigated. Goodrich v. Supreme Court of South Dakota, supra.

The court has examined each of plaintiff's claims which are set out in parpagraphs 4-19 of the complaint. In light of the record and briefs and is of the view that each was or could have been raised in the state proceedings and are therefore barred. In this regard defendants' brief amply sets out the record and the court feels no need to repeat it here. Suffice it to say that the bulk of plaintiff's complaints regard the nature of evidence relied upon to find a violation and the use of ethical considerations as a basis for disbarment.

Finally, the court would note that it has also emanined the merits of plaintiff's claim and can find no violation of any constitutional rights.

It is therefore

ORDERED

Dismissed.

May 20, 1980.

C

ORDER DISMISSING SUSPENSION TO PRACTICE BEFORE THE UNITED STATES COURT FOR THE NORTHERN DISTRICT OF IOWA.

This matter is before the court pursuant to its order to show cause why he should not be disbarred from practice in this court filed November 26, 1979.

On December 6, 1979, John D. Randall filed his response to the order to show cause. On January 28, 1980 the court denied his application for discovery and evidentiary hearing and directed the respondent to file the record and written briefs and arguments that were before the Supreme Court of Iowa. These documents have now been filed and examined by the court.

On the basis of this examination the court finds that there is support for the conclusion of the Iowa State Supreme Court that Randall's license to practice law in Iowa should be revoked. Further, the court finds that respondent has failed to show good

C

ORDER OF UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF IOWA DISBARRING PETITIONER.

D

ORDER OF UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF IOWA DISBARRING PETITIONER

cause why this court should not enter an order of suspension based upon the action of the Supreme Court of Iowa.

It is therefore

ORDERED

That John D. Randall is hereby barred from practicing law in the Northern District of Iowa and his certificate to practice law in this court is hereby revoked.

May 20, 1980.

D

ORDER DISMISSING SUSPENSION TO PRACTICE BEFORE THE UNITED STATES COURT FOR THE SOUTHERN DISTRICT OF IOWA.

On November 20, 1979 this court sent to John D. Randall an Order to show cause why he should not be suspended from practice of law in the United States District Court for the Southern District of Iowa based upon the decision of the Supreme Court of Iowa filed November 20, 1979, which revoked his license to practice law in the State of Iowa. On November 30, 1979, John D. Randall filed

his response to this Court's Order of November 20. On December 5, 1979, the Court denied respondent's application for further discovery and an evidentiary hearing and directed the respondent to file the record and written briefs and arguments that were before the Supreme Court of Iowa. The required documents and others have now been filed.

The Court examined the matter referred to above with particular attention to:

(1) Findings of fact, conclusions of law and recommendations of the First Division of the Grievance Commission.

(2) Appellant's breif and argument.

(3) Appellee's brief and argument.

(4) Appellant's reply brief and argument on the review of the Report of the Grievance Commission of the Iowa Supreme Court filed November 20, 1979; and

(5) Respondent's written brief and argument filed in this Court on December 17, 1979.

The Court on the basis of his examination finds that there is support for the conclusion of the Iowa State Supreme Court that the respondent's license to practice law in Iowa should be revoked. The Court further finds that the respondent has failed to show good cause why this Court should not enter an Order of disbarment based upon the action of the Supreme Court of Iowa.

IT IS THEREFORE ORDERED that John D. Randall, the respondent, is hereby barred from practicing law in the Southern District of Iowa and his certificate to practice law in the United States District Court for the Southern District of Iowa is hereby revoked.

IT IS FURTHER ORDERED that the Clerk of the Court is authorized and directed to return the documents filed by Mr. Randall in support of his response to Mr. Randall.

Signed this 17th day of January, 1980.

Code of Professional Responsibility for Lawyers of the State of Iowa, Preamble and Preliminary Statement:

> The Ethical Considerations are aspirational in character and represent the objectives toward which every member of the profession should strive. They constitute a body of principles upon which the lawyer can rely for guidance in many specific situations.
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> The Disciplinary Rules, unlike the Ethical Considerations, are mandatory in character. The Disciplinary Rules state the minimum level of conduct below which no lawyer can fall without being subject to disciplinary action. Within the framework of fair trial, the Disciplinary Rules should be uniformly applied to all lawyers, regardless of the nature of their professional activities. The Code makes no attempt to prescribe either disciplinary procedures or penalties for violation of a Disciplinary Rule, nor does it undertake to define standards for civil liability of lawyers for professional conduct. The severity of judgment against one found guilty of violating a Disciplinary Rule should be determined by the character of the offense and the attendant circumstances.

Code of Professional Responsibility for Lawyers of the State of Iowa, Ethical Considerations:

EC 1-5. A lawyer should maintain high standards of professional conduct and should encourage fellow lawyers to do likewise. He should be temperate and dignified, and he should refrain from all illegal and morally reprehensible conduct. Because of his position in society, even minor violations of law by a lawyer may tend to lessen public confidence in the legal profession. Obedience to law exemplifies respect for law. To law-

yers especially, respect for the law should be more than a platitude.

EC 5-1. The professional judgment of a lawyer should be exercised, within the bounds of the law, solely for the benefit of his client and free of compromising influences and loyalties. Neither his personal interests, the interests of other clients, nor the desires of third persons should be permitted to dilute his loyalty to his client.

EC 5-2. A lawyer should not accept proffered employment if his personal interests or desires will, or there is reasonable probability that they will, affect adversely the advice to be given or services to be rendered the prospective client. After accepting employment, a lawyer carefully should refrain from acquiring a property right or assuming a position that would tend to make his judgment less protective of the interests of his client.

EC 5-3. The self-interest of a lawyer resulting from his ownership of property in which his client also has an interest or which may affect property of his client may interfere with the exercise of free judgment on behalf of his client. If such interference would occur with respect to a prospective client, a lawyer should decline employment proffered by him. After accepting employment, a lawyer should not acquire property rights that would adversely affect his professional judgment in the representation of his client. Even if the property interests of a lawyer do not presently interfere with the exercise of his independent judgment, but the likelihood of interference can reasonably be foreseen by him, a lawyer should explain the situation to his client and should decline employment or

withdraw unless the client consents to the continuance of the relationship after full disclosure. A lawyer should not seek to persuade his client to permit him to invest in an undertaking of his client nor make improper use of his professional relationship to influence his client to invest in an enterprise in which the lawyer is interested.

EC 5-5. A lawyer should not suggest to his client that a gift be made to himself or for his benefit. If a lawyer accepts a gift from his client, he is peculiarly susceptible to the charge that he unduly influenced or overreached the client. If a client voluntarily offers to make a gift to his lawyer, the lawyer may accept the gift, but before doing so, he should urge that his client secure disinterested advice from an independent, competent person who is cognizant of all the circumstances. Amended and effective December 16, 1977.

EC 9-6. Every lawyer owes a solemn duty to uphold the integrity and honor of his profession; to encourage respect for the law and for the courts and the judges thereof; to observe the Code of Professional Responsibility; to act as a member of a learned profession, one dedicated to public service; to cooperate with his brother lawyers in supporting the organized bar through the devoting of his time, efforts, and financial support as his professional standing and ability reasonably permit; to conduct himself so as to reflect credit on the legal profession and to inspire the confidence, respect, and trust of his clients and of the public; and to strive to avoid not only professional impropriety but also the appearance of impropriety.

DR 1-102. Misconduct

(A) A lawyer shall not:

(1) Violate a Disciplinary Rule.

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(3) Engage in illegal conduct involving a moral turpitude.

(4) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

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(6) Engage in any other conduct that adversely reflects on his fitness to practice law.

DR 4-101. Preservation of Confidences and Secrets of a Client

(B) Except when permitted under DR 4-101(C), a lawyer shall not knowingly:

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(2) Use a confidence or secret of his client to the disadvantage of the client.

(3) Use a confidence or secret of his client for the advantage of himself or a third person, unless the client consents after full disclosure.

DR 5-101. Refusing Employment When the Interests of the Lawyer May Impair His Independent Professional Judgment

(A) Except with the consent of his client after full disclosure, a lawyer shall not accept employ-

ment if the exercise of his professional judgment on behalf of his client will be or reasonably may be affected by his own financial, business, property, or personal interests.

DR 5-104. Limiting Business Relations with a Client

(A) A lawyer shall not enter into a business transaction with a client if they have differing interests therein and if the client expects the lawyer to exercise his professional judgment therein for the protection of the client, unless the client has consented after full disclosure.

Code of Iowa, Section 610.24, Grounds of Revocation:

The following are sufficient causes of revocation or suspension:

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3. A willful violation of any of the duties of an attorney or counselor as hereinbefore prescribed.

4. Doing any other act to which such a consequence is by law attached.